IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 4669 of 2006
Date of Decision: September 11,2006

Suresh Kumar .....Petitioner

vs

State of Haryana and others .....Respondents

CORAM : HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S.BEDI

Present : Mr. R.K.Malik, Advocate for the petitioner
Mr. Harish Rathee, Sr. DAG Haryana, for the respondents

M.M.Kumar .J.(Oral)

The instant petition filed under Article 226 of the Constitution prays for quashing order dated 22.03.2006 (P-4) passed by the Chief Secretary of the respondent-State reverting the petitioner from HCS (Executive Branch) to his substantive post of Block Development & Panchayat Officer.

Brief facts of the case are that the petitioner was working as Block Development & Panchayat Officer when his name was considered for appointment to HCS (Executive Branch) through Register 'C'. The petitioner was found suitable and was appointed in accordance with the rules known as Punjab Civil Services (Executive Branch) Rules, 1930 (for brevity ' the Rules') (as applicable to the State of Haryana). According to rule 21 of the Rules, the petitioner was required to pass higher standard departmental examination within a period of two years. The departmental examination was held in December-2003, June-2004, December-2004 and May-June 2005. The petitioner was able to pass Group-D Hindi subject with higher standard in the examination held in December, 2003. He has also passed Group C-II Local

Funds Paper with higher standard in the examination held in June, 2004 and Group-A Criminal Law, Group-A-II Civil Law, Group-B Revenue Law with higher standard in the examination held in May-June, 2005. In other words, the petitioner has passed all papers in required higher standard except Group-CI Financial Rules which he had passed with lower standard. According to the rules, a candidate belonging to HCS has to pass Group-CI Financial Rules also in higher standard. As the period of two years was over, the petitioner made a request that he may be permitted to appear in the examination which was to be held in January, 2006 in respect of the Financial Rules paper. The petitioner was not allowed to appear.

On 24.1.2006,the petitioner was issued a show cause notice (P-2) proposing his reversion to the post of Block Development & Panchayat Officer. The petitioner duly replied the show cause notice on 14.2.2006 (P-3). However, the Chief Secretary found the explanation unsatisfactory and ordered the reversion of the petitioner by holding that the departmental examination was required to be passed within total four chances which had already been availed of by the petitioner. The operative part of the order reads as under:-

> "3. Whereas in terms of rule 21 of the said Rules, Shri Suresh Kumar was required to pass the Departmental Examination by the higher standard within two years from the date of his appointment to the HCS (EB) further in terms of rules 21 of the said rules read with rule 1 of the rule ibid for the departmental examination of the Assistant Commissioner or Extra Assistant Commissioner and candidates for the post of Extra Assistant Commissioner in Haryana, a member of this service can avail total 4 chances even beyond the period of two years, if the departmental examination is not conducted twice a year regularly.

> 4. Whereas consequent upon Shri Suresh Kumar failure to pass the departmental examination by the higher standard, as stated above, a notice was issued to him vide Memorandum No. 41/8/2005-5S (II) dated 24.1.2006 for termination of his service and he was given opportunity of showing cause against the action proposed to be taken.
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> 7. Shri Suresh Kumar could not pass the departmental examination by the higher standard within the the prescribed period of two years after availing the four chances.
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> 8. Now, therefore, the Governor of Haryana is pleased to revert Shri Suresh Kumar, from the HCS (Ex. Br.) to his parent Department i.e. Development and Panchayats Department with immediate effect under rule 21 of the Punjab Civil Services (Ex. Branch) Rules, 1930. "

The case of the petitioner has been opposed principally by insisting on rule 21 of the Rules which provides that if a member of the service fails to pass higher standard departmental examination within a period of two years, then his services are to be terminated. It has further been pointed out that the departmental examination has been held on regular intervals twice every year in the months of June and December. So the petitioner having appeared in the aforementioned examination and having failed to pass the examination by higher standard, the order of reversion has been passed on the aforementioned ground.

When the petition came up for consideration on 18.4.2006, we have passed an interim order permitting the petitioner to take the departmental examination which was to be held in April-May 2006. One last chance was given to him to take the examination as in similar circumstances, Hon'ble the Supreme Court has upheld the grant of such a chance to another candidate,

which was ordered to be granted by a Division Bench of this Court in the case of **Smt. Geeta Bharti v. State of Haryana** (CWP No. 4807 of 1998 decided on 17.8.1998). Accordingly, the petitioner has appeared in the examination and passed the same with higher standard.

The only question which survives for determination in the instant petition is whether the petitioner could be granted one additional chance to pass the examination for Financial Rules with higher standard or not. As already observed, the matter is not res integra. A Division Bench of this Court in Smt. Geeta Bharti's case (supra) has allowed one additional opportunity to a similar situated employee on the ground that the Government on its own level has been permitting the passing of departmental examination with higher standard within a period of three to six years. The judgment of Division Bench of this Court was challenged before the Hon'ble Supreme Court which upheld the aforementioned view of the Division Bench. The view of their Lordships reads as under:-

> " Having examined the relevant provisions, more particularly rule 21 of the Recruitment Rules, we are of the considered opinion that it would be open for the employer to terminate the services of an employee if the employee concerned has failed to pass the departmental examination within the stipulated period, subject to the power of Governor contained in proviso to rule 21. But at the same time, we cannot lose site of the fact that in the past several employees have been allowed to continue in their respective post, notwithstanding the fact they have not passed the departmental examination within the stipulated period, and in the case in hand, the fact that the employees concerned were engaged in discharging their duties in public interest should not be totally lost site of. It is in these circumstances, we do not find that the High Court committed any error by requiring the Government to give the employee an opportunity of clearing the departmental examination at a

> higher standard. In the aforesaid premises, we are not inclined to interfere with the impugned direction of the High Court requiring the Government to give an opportunity to the employees to pass the departmental examination. We , however, do not approve of the direction to the Governor for considering whether the employees concerned would be exempted from passing the departmental examination. That part of the direction of the High Court accordingly stands set-aside."

It is also pertinent to mention that we have quoted the aforementioned view in the interim order dated 18.4.2006 which was challenged before the Hon'ble Supreme Court in S.L.P. No. 10415/2006 and the S.L.P. was dismissed on 14.7.2006. A copy of the order passed by the Hon'ble Supreme Court has been produced by the learned counsel for the petitioner and is taken on record as Mark-A.

In view of the above, we allow the writ petition and set-aside the impugned order dated 22.3.2006 reverting the petitioner to the post of Block Development & Panchayat Officer. We further direct the respondent to formally declare the result of the petitioner in accordance with law. However, we do not make any order as to costs.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

11.9.2006
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